

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 627 OF 2000

IN

WRIT PETITION NO. 140 OF 1997

Shri Kisan Damodar Pilankar ... Appellant
(Org. petitioner)

Versus

Shri S.S.Hirurkar & Anr. ... Respondents
(Orig. Respondents)

And

Tanaji Krishna Kaldhane & Ors. ... Applicants
Mr. P.M.Patel i/b. Ms. N.D.Buch for the appellant.
Mr. V.P.Vaidya for respondent No.2.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATE : 21st August, 2007.

P.C.

1. By this Appeal, the appellant challenges the order dated 21st June, 2000 passed by the learned Single Judge of this Court in Writ Petition No.140 of 1997. By that order, the learned Single Judge rejected the Writ Petition filed by the present appellant. The present appellant had filed the petition under Article 226 of the Constitution of India challenging the award dated 20th November, 1995 passed by the Industrial Court in

Reference IC (No.19 of 1984. The Reference that was made by the Government to the Industrial Court reads thus :-

"The employees whose names appear in Annexure "A" who have not been taken back on work for any reason, after the general indefinite strike in the Bombay Cotton Textile Industry, commencing from 18th January 1982, be reinstated with such consequential reliefs such as back wages and continuity of service etc., as may be deemed fit."

2. The Industrial Court by the award held that the termination of services of the workers was not in accordance with law. Even after holding that the termination is not valid, the Industrial Court held that in view of the memorandum entered into between the Union and the new management which had taken over the Mill dated 5th February, 1990, neither reinstatement nor back wages can be granted. The Tribunal has observed that as the MOU was entered into by the Union during the pendency of the Reference, despite having knowledge of the reference, the members of the Union are not entitled to reinstatement and back wages. The Industrial Court directed the management to make ex-gratia payment to the workers.

3. We have heard learned Counsel for both the sides.

4. The learned Counsel appearing for the appellant submits that it is clear from the award of the Industrial Court as also the order passed by this Court that relief of reinstatement and back wages has been denied to the appellant and similarly circumstanced workers because of the Memorandum dated 5.2.1990. The learned Counsel pointed out to us that by a Judgment in Writ Petition No.847 of 2003 (M/s. Swan Mills Ltd. vs. Shri Shamrao Shankar Vaidya & Anr.), the learned Single Judge of this Court has held that the MOU dated 5.2.1991 entered into between the Management and and Rashtriya Mill Mazdoor Sangh, a Trade Union, is not legal and does not have the force of law. The learned Counsel pointed out that the judgment was challenged in appeal, but the appeal was dismissed. The learned Counsel, therefore, submits that in view of the finding recorded by the learned Single Judge of this Court that the MOU dated 5.2.1990 does not have the force of law, the award of the Industrial Court which denies the relief of reinstatement and back wages to the workers only because of the settlement is liable to be set aside.

5. The learned Counsel appearing for the respondents,

on the other hand, submits that insofar as the judgment of the learned Single Judge in the case of Swan Mills vs. Shamrao Shankar Vaidya, referred to above, is concerned, in that case the employee concerned was in the employment of the employer even after the strike period i.e. till 1989. According to the learned Counsel, this is the distinguishing feature between the judgment of the learned Single Judge in Shamrao Vaidya's case and the present case.

6. In the light of these rival submissions, we have examined the judgment of the learned Single Judge in Shamrao Vaidya's case as also the award of the Tribunal and the judgment of the learned Single Judge. It is clear from the award that the only consideration that has weighed with the Industrial Court for denying the relief of reinstatement and back wages though the Industrial Court found that the termination of the service of the workers is not in accordance with law is the settlement dated 5.2.1990. It is clear from the Judgment of the learned Single Judge in the case of Shamrao Vaidya that the learned Single Judge has held that the settlement does not have the force of law. In our opinion, the distinguishing feature pointed out by the learned Counsel appearing for the respondents does not appear to be relevant. In any case, in view of the order that we propose to make, it is not necessary for

us to record any finding on this issue. In our opinion, it is clear that in view of the subsequent orders passed by this Court in different proceedings, the award of the Industrial Court denying reinstatement and back wages to the workers only because of the settlement dated 5.2.1990 cannot be held to be in accordance with law. Considering the facts and circumstances of this case, in our opinion, the following order would meet the ends of justice :-

- (i) The award dated 20.11.1995 passed in Reference (IC) No.19 of 1984 passed by the Industrial Court and the order passed by the learned Single Judge of this Court in Writ Petition No.140 of 1997 dated 21st June, 2000 is set aside.
- (ii) Reference IC (NO.19 of 1984 is remitted to the Industrial Court for hearing and decision in accordance with law.
- (iii) All contentions that may be available to both the sides are kept open to be raised before the Industrial Court.
- (iv) The Industrial Court shall hear the matter

only after the workers individually file their affidavit claiming entitlement to prosecute the Reference.

- (v) Any benefits that may have been received by the workers pursuant to the award, which is set aside by this order, shall be taken into consideration by the Industrial Court while working out the benefits to which the workers may be entitled to according to the new award.

Appeal is disposed of. No order as to costs.

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(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)